

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

RETAIL ACCESS OPTIMIZATION INITIATIVE 2011

Docket No. N2011-1

**REPLY BRIEF OF THE UNITED STATES POSTAL SERVICE**

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Kevin Calamoneri  
Managing Counsel,  
Corporate and Postal Business Law

Anthony F. Alverno  
Chief Counsel, Global Business and  
Service Development

Matthew J. Connolly  
Kenneth N. Hollies  
James M. Mecone  
Brandy A. Osimokun  
Michael T. Tidwell  
Attorneys

475 L'Enfant Plaza West, S.W.  
Washington, D.C. 20260-1137  
(202) 268-2997; Fax -5402  
November 10, 2011

## Table of Contents

I.	Introduction. ....	1
II.	The Statutory Scheme Grants Postal Management Wide Latitude Subject To Several Restrictions. ....	2
III.	Postal Management Determines The Nature Of Service Changes Within The Scope Of A Section 3661 Request. ....	4
IV.	Various Parties Misinterpret Applicable Law. ....	7
	A. The NAPUS and NLP References To Legislative History Are Incomplete and Fail to Illuminate. ....	7
	B. The Initial Briefs of AUSPL, APWU And The Public Representative Share A Fundamental Misunderstanding Of The Law. ....	9
	1. Section 101(b) does not immunize rural offices from discontinuance review. ....	10
	2. Neither examining low earned workload Post Offices for discontinuance nor discontinuing them violates section 403(c). ....	13
	C. One-Size-Fits-All Definitions Are Not Necessary For Purposes Of The RAO Initiative. ....	17
	D. Merit Aside, Post-Implementation Review Is Beyond The Scope Of The Commission's Section 3661 Jurisdiction. ...	19
V.	Intervenor Criticisms Of The RAO Initiative Nomination Criteria And The Conduct Of Respective Discontinuance Studies Lack Merit And Significance. ....	20
	A. The RAO Initiative Identifies Candidate Facilities By Applying Criteria that Measure General Characteristics. ....	21
	B. The Discontinuance Review Process Established Under Section 404(d) And Refined by PRC Review Assesses Specific Aspects Of Each Retail Facility. ....	24
VI.	The Remaining Intervenor Criticisms Of The RAO Initiative Lack Merit. ....	29
	A. There Is No Basis For The Public Representative's Conspiratorial Kerfuffle. ....	29
	1. Conspiracy theories make inherently more interesting reading than discovery responses in administrative records. ....	29

2.	History can inform us regarding what is or is not realistic. ....	32
B.	Conflation Of RAO Initiative Elements Leads to Confusion.	33
1.	The umpteenth summary could be the charm. ....	33
2.	AUSPL gets it wrong. ....	34
3.	NAPUS and NLP follow suit. ....	35
4.	NNA goes one step farther. ....	36
C.	NAPUS Misreads The Testimony Of Witness Boldt And USPS Handbook PO-101. ....	37
D.	When Citing Record Evidence, The NLP Initial Brief Sometimes Vacillates Between Disingenuous And Misleading. ....	40
E.	The Anecdotes Of NLP Witness Hobbs Are No Substitute For Substantial Record Evidence. ....	41
F.	NNA's Suggestions For Improving Discontinuance Review Are Ill-Conceived. ....	43
G.	CSRL's Inattention Is The Source Of The Belief That It Made A Revelation. ....	46
H.	VPO Concerns Are Misguided And Overstated. ....	48
VII.	Conclusion. ....	49

## I. Introduction.

In its November 4, 2011 Initial Brief, the United States Postal Service summarizes the evidence of record in Docket No. N2011-1, the scope of the Postal Regulatory Commission's responsibilities under 39 U.S.C. § 3661(c), and the legal standards that apply to the exercise of those responsibilities. That brief explains why the advisory opinion the Postal Service has requested should conclude that the service changes anticipated to result from the Retail Access Optimization (RAO) Initiative, and the process through which those changes will be determined locally on a case-by-case basis, are both consistent with the relevant policies of title 39, United States Code.

The RAO Initiative invokes, and therefore depends upon an existing statutorily mandated process for discontinuing operations of Post Offices, pursuant to 39 U.S.C. § 404(d). As in PRC Docket No. N2009-1 (Station and Branch Optimization and Consolidation, 2009 (SBOC)), wherein the Commission's advisory opinion commented on that same process, the Postal Service expects that the Commission may also choose to do so in the instant proceeding. The Postal Service relied upon some of the Commission's SBOC comments in subsequent revisions to the regulations implementing section 404(d), 39 C.F.R. Part 241.3.<sup>1</sup> See 76 *Fed. Reg.* 41413 (July 14, 2011). The Postal Service does not understand that the consistency of its Post Office discontinuance procedures themselves with the policies of Title 39 constitutes

---

<sup>1</sup> See, e.g., Tr. Vol. 1 at 601-12 (cross-examination by Commissioners of USPS Vice President for Delivery and Post Office Operations, Dean Granholm, regarding changes to the discontinuance process tied to specific PRC recommendations in SBOC).

part of the RAO Initiative Request. Nevertheless, the consistency of that process, as invoked by the nomination of facilities by the RAO Initiative, is the subject on which an advisory opinion has been requested.

Because the major facets of the case were discussed in its Initial Brief, the Postal Service will not revisit every matter touched upon in therein. In this Reply Brief, the Postal Service focuses primarily on arguments propounded by various parties in their November 4, 2011 Initial Briefs to demonstrate that none of the critics of the RAO Initiative has provided a basis for the Commission to conclude that the service changes are inconsistent with the policies of title 39. The fact that the Postal Service has not chosen to respond to every argument presented in each intervenor Initial Brief should not be interpreted as agreement by the Postal Service with points not otherwise addressed below.

II. The Statutory Scheme Grants Postal Management Wide Latitude Subject To Several Restrictions.

The basic mission of the United States Postal Service is to bind the Nation together through the personal, educational, literary and business correspondence of the people. 39 U.S.C. § 101(a). The Postal Service invites the Commission to review discussion of applicable sections of title 39, United States Code, at pages 16-20 of the USPS Initial Brief, and its summary of the Commission's own views presented therein at pages 14-16. The Postal Service also invites the Commission's attention to pages 10-13 and 20 of the Initial Brief of Valpak.

The statutory scheme gives broad discretion to postal management in determining how to fulfill the various objectives of title 39 in a manner that is not unreasonably or unduly discriminatory under section 403(c). With the exception of the section 101(b) prohibition against closing a small Post Office solely for operating at a deficit, reasonable minds may disagree as to how much weight should be given to each of the various other factors the Postal Service must consider when discontinuing the provision of a service through a particular retail facility. In this regard, the observation of the United States Court of Appeals for the District of Columbia Circuit is illuminating. In addressing another portion of Title 39 that required consideration of a wide range of inter-related factors in postal ratemaking, the court observed that:

the factors listed were not analogous to a table of atomic weights, or to a multiplication table. The factors are reminders of relevant considerations, not counterweights to be placed on scales .... No one who seeks fairly and equitably to determine a complicated rate structure ought to suppose that there is a correct answer, or even that in the final mix there should have been added a specified number of spoonfuls of each of the ingredients. A conscientious, competent rate-making body proceeds by opening its mind to relevant considerations, and closing its ears to irrelevant ones. It is governed by policies, not politics.

*Association of American Publishers v. Governors of the United States Postal Service*, 485 F. 2d 768, 774 (D.C. Cir. 1973). The same principle applies here. A service change plan must reflect the influence of certain mandatory policy prescriptions, and a fair and equitable mix of other service and efficiency considerations. Single policy objectives cannot be isolated. All must be considered and given reasonable consideration based on the circumstances of

the case. Even then, there is no single “correct” answer. Such is the case in Docket No. N2011-1.

The Postal Service can no more provide service irrespective of cost than it can reduce costs irrespective of the impact on service. The Postal Service has carefully weighed its statutory service and efficiency obligations and is examining opportunities to discontinue retail operations at some locations through its RAO Initiative, the first exercise of its recently established authority for Headquarters to nominate specific facilities for the conduct of discontinuance studies. The Postal Service intends to see what discontinuance opportunities the RAO Initiative may yield, and what it can learn through the effort, while it continues to bind the nation together through the correspondence of the people. Applying the retail facility discontinuance review process in USPS Handbook PO-101, designed as it is to comply with section 404(d), the Postal Service intends to make decisions that preserve a maximum degree of effective and regular service to rural areas, communities and small towns.

### III. Postal Management Determines The Nature Of Service Changes Within The Scope Of A Section 3661 Request.

The question posed by the Request in this docket is not whether the Postal Service has proposed “the perfect” or “the right” or “the best possible” or an “absolutely necessary” service change for the Commission to consider from among an infinite array of possible scenarios. The purpose of a section 3661 proceeding is to examine the service change selected by postal management for implementation and to develop a record basis for reaching a conclusion as to

whether *that change* is being pursued for reasons consistent with the policies of title 39 and can therefore be expected to result in service consistent with those policies. Other reasonable minds, if charged with the responsibility of managing the Postal Service, might make different choices. However, that is not the standard by which postal management's determination to pursue the Retail Access Optimization Initiative may be judged. The Postal Service has clearly described the service changes it plans to pursue, and perhaps implement, and the underlying policies of title 39 that the resulting service would satisfy.

At pages 27-28 of its Initial Brief, the American Postal Workers Union (APWU) argues that the discontinuance process should include consideration of alternatives to closing Post Offices. APWU seems not to comprehend that discontinuance is defined as the permanent closure or consolidation of a Postal Service operated retail facility. USPS Handbook PO-101 at 54. For whatever reason, APWU declined to participate in the rulemaking that resulted in the substantial revisions to 39 C.F.R. Part 241 and Handbook PO-101 that took effect on July 14, 2011. In any event, the existence of nearby Postal Service-operated facilities as well as alternate access opportunities (locative or not) and the potential utilization of various kinds of contract units are all quite commonly considered in the context of facility-specific discontinuance studies. So, the Postal Service does examine alternatives to closing Post Offices, just as it sometimes decides to keep Post Offices open.

At page 28 of its Initial Brief, the Public Representative argues that the Postal Service could pursue the objectives of the RAO Initiative by such alternate



means as deploying mobile vans, reducing retail hours and replacing Postmasters with members of the APWU.<sup>2</sup> APWU points to no record evidence – nor could it -- regarding the degree to which mobile vans or a reduction in the hours during which retail windows are open might actually reduce costs. Nor does it point to any evidence reflecting customer preferences between station closures vs. reductions in operating hours.

At this late stage of the docket, APWU seems not to grasp that the purpose of the Request is to obtain an advisory opinion from the Commission on whether a particular plan to optimize the postal retail network by discontinuing operations at some retail facilities would result in service changes that conformed to the policies of the Title 39. This docket is not a solicitation of preferences for other changes in service or methods of controlling costs, regardless of how such alternatives might better serve APWU's self-interest.

APWU's belated introduction of alternatives to the RAO Initiative must be summarily dismissed by the Commission. Contrary to the apparent view of APWU, the Commission is not authorized by section 3661 to second-guess the judgment of postal management in selecting the service changes for which it requests an advisory opinion. Nor is it the Commission's task to determine

---

<sup>2</sup> Not surprisingly, at page 10 of its Initial Brief, APWU summarily rejects the practice of rural letter carriers operating a "Post Office On Wheels" as inherently inadequate to meet the needs of rural customers, despite the long-standing operation of this retail option and the fact that most of such transactions do not require meeting the carrier at one's mailbox. See PRC Docket No. N2010-1, USPS response to DBP/USPS-46(a) (June 8, 2010, designated July 19, 2010). By pointing to several exceptional types of retail transactions at page 11 of its Initial Brief, APWU apparently seeks to draw attention away from the reality that 85 percent of retail transactions merely involve the purchase of postage. See USPS-T-1 at 7-8. APWU may perceive limitations that make the Post Office On Wheels less than perfectly ideal, but section 101(b) requires only that access be effective and regular.

whether some alternative service objectives would be better for the Postal Service to pursue. Notwithstanding the legislative changes enacted as a result of the Postal Accountability and Enhancement Act of 2006, management of the national postal system and how best to pursue its operational goals remain in the hands of postal management and have not been transferred to APWU or the Postal Regulatory Commission.

At pages 15-16 of its Initial Brief, the National League of Postmasters argues that the Commission's advisory opinion should not be constrained by the scope of the RAO Initiative. NLP exhorts the Commission to address consequences of the possibility of the Postal Service allegedly developing plans to discontinue up to 15,000 Post Offices and requiring customers of those offices to obtain postal services over the internet. No evidence of the existence of any such concrete plan was presented during the litigation of Docket No. N2011-1, and that is certainly not the plan on which an advisory opinion has been requested. Accordingly, the Docket No. N2011-1 advisory opinion should focus on the RAO Initiative.

#### IV. Various Parties Misinterpret Applicable Law.

##### A. The NAPUS and NLP References To Legislative History Are Incomplete and Fail to Illuminate.

At pages 6-7 of its Initial Brief, the National Association of Postmasters of the United States (NAPUS) points to opinions expressed by several Senators debating the 1976 amendments to the Postal Reorganization Act about the

symbolic role of rural Post Offices. However, Congress did not enact any amendments requiring, in whole or in part, that rural Post Offices, be preserved as monuments to or symbols of government largesse. Congress merely amended section 101(b) to prevent small Post Offices from being closed *solely* for operating at a deficit, and it established the terms of the Commission's present appellate authority under section 404(d) to review final determinations to close Post Offices. Notwithstanding any economic, social and cultural benefit that may result from the presence of a Post Office at a particular rural location, Congress did not mandate in title 39 that rural Post Offices serve any purpose beyond the basic function of the Postal Service articulated in section 101(a) to "provide postal services to bind the Nation together through the personal, educational, literary and business correspondence of the people."<sup>3</sup>

At pages 4-6, the National League of Postmasters (NLP) Initial Brief attempts to link the Retail Access Optimization Initiative to the Postal Service's long-standing policy of annually declining to request that Congress appropriate funds to reimburse it for providing a maximum degree of effective and regular postal service nationwide in communities where post offices may not be deemed self-sustaining, as provided by section 2401(b)(1).<sup>4</sup> NLP characterizes the RAO Initiative as a sudden reaction by the Postal Service to the consequence of

---

<sup>3</sup> In the context of a given Post Office discontinuance, the Postal Service is obliged to consider the "effect on the community served" by that Post Office. 39 U.S.C. § 404(d)(2)(a)(i).

<sup>4</sup> It should be observed here that section 2401(d) stands as stark evidence that Congressional authorization to grant an appropriation does not guarantee that the appropriation will be forthcoming. That provision was enacted in 1993 to compensate the Postal Service for successive decisions by Congress not to appropriate funds under former section 2401(c) to compensate the Postal Service for revenue forgone under former section 3626. See Public Law 103-123, Title VII, §§703(a), 704(b)(1) (October 28, 1993).

having forgone the opportunity to have requested and possibly obtained as much as \$13.8 billion in cumulative rural service subsidies since 1982.<sup>5</sup> NLP then argues that the RAO Initiative reflects an attempt by the Postal Service to "shun" and "wiggle out of" its statutory service responsibilities.

The Postal Service has taken no steps to avoid or evade any service responsibility. The Postal Service has a long history of striving to meet all of its service obligations, with or without a subsidy, while also responding to the Congressional mandate that it do so efficiently and economically. See sections 101(a); 403(a), (b)(1) and (b)(3); 404(d)(2) and 3661(a). The opportunity to request a rural service subsidy under section 2401 does not override or negate these obligations. A section 2401(c) subsidy would not be a grant to operate without any regard for efficiency or economy. Nor, on its face, would it neutralize the authority inherent in section 404(d) to close small Post Offices. The RAO Initiative represents nothing more than a careful consideration of *all* of the Postal Service's statutory responsibilities, even the unpopular ones.

B. The Initial Briefs of AUSPL, APWU And The Public Representative Share A Fundamental Misunderstanding Of The Law.

The arguments at pages 4-10 of the Association of United States Postal Lessors (AUSPL) Initial Brief, at pages 9-11 of the APWU Initial Brief, and the

---

<sup>5</sup> NLP's math makes no sense. It has the Postal Service, in the midst of a staggering mega-billion dollar fiscal crisis, pinning its hopes of a turnaround on the basis of a reduction somewhere between \$0 and \$200 million in annual operating costs through the RAO Initiative. The statutory cap on rate increases at the same time as volume began to decline precipitously also removed the Postal Service's ability to raise rates as a source of revenue. Hence, NLP's pretense that legal subsidies continued on an unchanging path of accrual from 1982 to the present also conveniently ignores all of the economical and political context.

Initial Brief of the Public Representative at pages 6-10 reflect a blatant mischaracterization of applicable law in an effort to deny the possibility that the discontinuance of a single rural Post Office can be justified under current law on any conceivable basis. For the reasons explained below, these arguments must be rejected by the Commission.

1. Section 101(b) does not immunize rural offices from discontinuance review.

At page 4 of its Initial Brief, AUSPL argues that it is a *per se* violation of section 101(b) for the Postal Service to discontinue the operations of any Post Office based on low earned workload. APWU makes a parallel argument at page 9 of its Initial Brief. The Public Representative makes the same mistake beginning at page 7 of its Initial Brief. For purposes of this argument, all three parties must embrace two fictions: first, "low earned workload" must equate exactly with "operating at a loss;" second, they assert that section 101(b) prohibits the consideration of *any* financial factors in determining whether to discontinue a small Post Office.

Under USPS Handbook PO-101 § 212.3, low earned workload is a factor that can be used to nominate an office for discontinuance review. However, low earned workload is not a measure of whether a Post Office is operating at a loss, within the meaning of section 101, or by any other rational standard.<sup>6</sup> A proposed discontinuance of a small Post Office may not proceed to a final

---

<sup>6</sup> "Low earned workload" is no more the equivalent of "operating at a loss" than are "high operating expense" or "low revenue."

determination if the sole reason is that the facility operates at a loss. Consistent with the statutory prohibition in section 101(b), when it amended 39 C.F.R. Part 241 this year, the Postal Service provided in proposed rules that no initial feasibility study of a small Post Office may commence, absent other permissible criteria, if the sole justification is that the office operates at a deficit. This requirement was maintained as part of the final rule. 76 *Fed. Reg.* 41414 (July 14, 2011).

As the November 2 status report in USPS Library Reference N2011-1/11 reiterates, nomination of low earned workload offices for discontinuance review triggers consideration of the USPS Handbook PO-101 criteria to determine whether one or more of them justify not moving forward with further discontinuance review. To date, 195 such RAO Initiative candidate facilities have been eliminated from further consideration. If an RAO Initiative candidate facility advances into a full discontinuance evaluation, it is judged on application of the full range of USPS Handbook PO-101 review criteria that implement all of the policies of section 404(d), and more broadly of title 39.

It is undisputed that the selection of the \$27,500 revenue threshold figure<sup>7</sup> that narrowed the pool of Category 1 Post Offices to a manageable size results in a greater RAO Initiative focus on smaller Post offices than if \$47,500 or \$127,500 were the threshold figure utilized. However, section 101(b) does not immunize small Post Offices -- or even the smallest Post Offices -- from discontinuance review, notwithstanding the broad obligation to "provide a maximum degree of

---

<sup>7</sup> \$10,000 for Alaska.

effective and regular service to rural areas communities and small towns where post offices are not self sustaining." Section 101(b) does not require the Postal Service to avert its eyes from the ledger and exclude *all* financial considerations in determining whether to discontinue a Post Office. See section 404(d)(2)(A)(iv). Yet, that is the precise logical extension of argument by AUSPL and APWU. Notwithstanding the repeated commands in sections 101(a), 403(a) and (b), and 3661(a) to provide service efficiently and economically, section 101(b) merely forbids making discontinuance determinations *solely* on the basis of the fact that the operating costs of a facility exceed its revenues. USPS Handbook PO-101 establishes a review process that requires documentation of postal management's consideration of a variety of service, cost and revenue factors, and impacts on customers, communities and employees, before making a determination to discontinue a Post Office, no matter its size, and regardless of whether it is in the heart of a small hamlet or a bustling metropolis.

The "low earned workload equals operating at a loss" argument aside, APWU goes a step further to argue at page 9 of its Initial Brief that the RAO Initiative absolutely:

runs afoul of Section 101(b) because it leads to the study of and likely closure of postal retail facilities in rural areas, communities and small towns where post offices are not self-sustaining resulting in a diminution of service contrary to the edict to provide a "maximum degree of effective and regular service" to these constituencies.

Here, APWU essentially asserts that section 101(b) forbids postal management from even *considering* whether to close a rural Post Office. The argument is

premised on the false notion that any act to diminish any retail infrastructure in any rural setting violates section 101(b) because it would result in less than *the* maximum retail infrastructure – implicitly defined either as the current rural retail infrastructure or the most rural retail infrastructure possible. The argument runs contrary to the plain meaning of section 101(b) and ignores various other statutory policies that must also be considered to strike a reasonable balance in providing effective and regular service. On this issue, the Postal Service invites the Commission's attention to pages 10-13 of the Initial Brief of Valpak.

2. Neither examining low earned workload Post Offices for discontinuance nor discontinuing them violates section 403(c).

At page 4 of its Initial Brief, the AUSPL argues that the ROA Initiative has a "significantly adverse effect on rural post offices." However, to date, no Post Office has been discontinued and no service has been changed as a result of the RAO Initiative. So, there has been no effect on any office that could fairly be characterized as adverse. Next, AUSPL grasps at section 403(c) to argue that the RAO Initiative selection criteria discriminate and have a highly disparate impact on rural Post Offices. APWU makes a similar pitch in section III.B. of its Initial Brief. These characterizations of the RAO Initiative as violating section 403(c) reveal a fundamental misunderstanding of the law. Section 403(c) does not bar the Postal Service from discriminating among postal customers or granting a preference to some customers when providing service. It only bars discrimination and preferences that are *unreasonable* or *undue*. More importantly, it explicitly applies only to the provision of postal services and to the



establishment of classifications, rates and fees. The selection of a four groups of postal facilities to review for possible discontinuance is not the extension or deprivation of access to a service, classification, rate or fee. Accordingly, reference to section 403(c) in this context is misguided.

Even if that were not the case, the analogy at page 5 of the AUSPL Initial Brief to principles of employment discrimination law misses another fundamental distinction. In employment discrimination, there is no allowance for intentional discrimination based on specified employee/applicant characteristics (race, gender, religion, *etc.*), even if the discrimination by the employer is found not to be "unreasonable" or "undue." While the Postal Service also may not intentionally discriminate among its customers on those same bases when providing access to its services and products, it is free to engage in discrimination and grant preferences among customers on other grounds, so long as such discrimination and preferences are neither unreasonable nor undue.

Moreover, when disparate impact is demonstrated in employment law contexts, the burden of persuasion shifts to the employer to demonstrate that the policy resulting in such impact has a rational basis. Every locally-initiated single facility discontinuance proposal undoubtedly threatens some customers served by the facility under review with a disparate impact. If implemented, the discontinuance irrefutably delivers on that threat. But the impact cannot be traced to reliance upon impermissible factors such as race, gender or religion;

the impact is borne by all customers who actually used that office.<sup>8</sup> The only substantially nationwide discontinuance review initiative that could avoid a charge of threatening a disparate impact would be one that included every retail facility in the postal system. Still, no matter what criteria were applied to make discontinuance decisions as part of that initiative, it would yield the same disparate impact, but simply on a larger scale.

APWU witness Morrison's assertion about the RAO Initiative's potential for disparate impact upon vulnerable customer groups stems directly from use by the Postal Service of a low revenue criterion for three of the four groups of offices. Tr. Vol. 4 at 987-88. The low revenue criterion would tend to select offices with customers with lower incomes who are also more rural. As such, APWU's thesis amounts to pointing out that use of a criterion that looks directly at how customers actually use or obtain access at a facility by definition targets vulnerable customers.<sup>9</sup> Fortunately, as illustrated above, APWU's position is not supportable as a legal proposition; it certainly does not rest upon logic since it would preclude the Postal Service from taking any discontinuance action, which

---

<sup>8</sup> APWU makes this argument and extends it to vulnerable customer groups, such as the elderly and the poor. What APWU fails to recognize is that (1) impacts are not, in any sense, caused by customers having particular attributes, and (2) the customer groups (including generic non-white minorities) are afforded no special protection by the law. While the Postal Service remains sensitive to the needs for access to postal services by the elderly (who may have mobility challenges while avoiding use of non-mail communications), it does not target such customers by selecting offices near them for discontinuance studies. All customers need some level of access, regardless of their protected legal status or vulnerabilities.

<sup>9</sup> With one exception, witness Morrison's results for rural offices (as she defines them) are not statistically significant. APWU-T-1 at 8-9. In other words, her results cannot be said, on statistical grounds, to differ from what a random selection of offices would generate. On this basis, APWU argues that the Postal Service should not, in effect, be allowed to close any office. APWU Initial Brief, section III.

as a matter of policy would preclude pursuit of statutory commands to manage efficiently and economically.

The Postal Service has amply demonstrated why the various categories of RAO Initiative candidate facilities were selected for review. USPS-T-1 at 14-17. If the USPS Handbook PO-101 process and criteria are properly applied, the rationale for their selection is sufficient to overcome any claim that customers of one particular census demographic living in proximity to RAO Initiative candidate facilities are disproportionately or unfairly at risk of having their nearest postal retail facility discontinued. In any event, as explained above, it is not the nomination of facilities for discontinuance review that triggers considerations of 403(c), but the discontinuance determinations themselves, none of which have yet occurred. For the same reasons, the arguments at pages 11-15 of the APWU Initial Brief are without merit.

Thus, even if the RAO Initiative candidate pool were limited exclusively to a stipulated pool of indisputably "small" Post Offices within the meaning of section 101(b), the nomination criteria do not implicate section 403(c). On the other hand, each and every final determination within the scope of such a hypothetical Initiative would be subject to review by the Commission on a case-by-case basis under 404(d) for the purpose of determining whether each determination gave appropriate consideration to the policies in section 101(b).

C. One-Size-Fits-All Definitions Are Not Necessary For Purposes Of The RAO Initiative.

At page 11 of its Initial Brief, APWU refers to section 101(b) and criticizes the Postal Service for not having a precise definition of a "small Post Office." Under section 101(b), these offices cannot be closed solely for operating at a deficit. APWU expresses alarm that the Postal Service cannot comply with this provision without first defining and designating which of its Post offices are "small." However, as emphasized at page 189 of Tr. Vol. 1:

The Postal Service has not labeled specific Post Offices as falling within the ambit of 39 U.S.C. §101(b), because to a greater or lesser extent that section defines policy that applies to most offices.

On the following page, the Postal Service further explains:

Title 39 U.S.C. § 404(d)(2)(A)(iii) requires [it] to consider:

whether such closing or consolidation is consistent with the policy of the Government, as stated in section 101(b) ... ,that the Postal Service shall provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where [P]ost [O]ffices are not self-sustaining;

in every discontinuance study. The Postal Service accordingly understands section 101(b) as illustrating broad policy embodying the breadth of its universal service obligation: every customer, including those in small, isolated towns, needs regular and effective access to the sending and receipt of mail, needs that define the minimum necessary access to postal service.

The surest way for the Postal Service to avoid the charge that it is closing a small Post Office solely for operating at a deficit is to apply the USPS Handbook PO-101 discontinuance review process to Post Offices as it does today -- without regard to whether the office could be characterized as large or

small, rural or urban. That process is designed to require consideration of a variety of service, cost and revenue criteria, together with all applicable policies of title 39. It, therefore, precludes any final agency decision that actually follows its guidance from being based solely on whether a facility is operating at a loss within the meaning of section 101(b).

APWU's criticism at page 11 of its Initial Brief that the Postal Service does not have a standard working definition of "maximum degree of effective and regular service" for purposes of section 101(b) also lacks merit. Section 101(b) must be read in tandem with section 403(b)(3) which grants postal management considerable latitude:

to establish and maintain postal facilities of such character and in such locations that patrons through the Nation, consistent with reasonable economies of postal operations, have ready access to essential postal services.

In harmonizing these provisions, the Postal Service must make determinations that reflect the peculiar circumstances of each local service area in a manner that no cookie-cutter, one-size fits-all regulation can. Accordingly, it applies the USPS Handbook PO-101 review process in a manner that permits it to exercise the broad discretion described by the Postal Regulatory Commission in its *Report on Universal Postal Service and the Postal Monopoly* at 19-20, 26 and 195. (December 19, 2008).

D. Merit Aside, Post-Implementation Review Is Beyond The Scope Of The Commission's Section 3661 Jurisdiction.

At page 29 of its Initial Brief, APWU implores the Commission to go beyond its authority under section 3661<sup>10</sup> and advise that the Postal Service should establish a post-implementation review process for evaluating the after-effects of a Post Office closure. Had APWU presented its suggestion in the form of testimony during Docket No. N2011-1, there would have been an opportunity for the parties and the Commission to examine the feasibility of its proposal. APWU fails to identify a single policy in title 39 that authorizes the Commission to direct or oversee the production of such an accounting within the context of a request for an advisory opinion, or the relevance of such information to the Commission's limited role under section 3661.

To be clear, section 3661 does not authorize the Commission to supervise the manner in which the Postal Service executes the general duties articulated in subsections 403(a) and (b).<sup>11</sup> Section 3662(a) allows for Commission review of postal compliance with certain prescribed duties; however such review is not *sua sponte*, and is constrained, for instance, by the terms under which the Commission may review complaints alleging undue or unreasonable preference or discrimination under section 403(c).

---

<sup>10</sup> Section 3661 provides that the Commission shall advise whether changes in the nature of the service anticipated from the RAO Initiative would be consistent with the policies of Title 39.

<sup>11</sup> Responsibility for auditing post-implementation review of operational programs has been vested in other oversight bodies. APWU appears to suggest that the Commission should usurp their roles.

V. Intervenor Criticisms Of The RAO Initiative Nomination Criteria And The Conduct Of Respective Discontinuance Studies Lack Merit And Significance.

In their initial briefs, intervening parties challenge various aspects of the Retail Access Optimization (RAO) Initiative, ranging from the selection of candidates for discontinuance study to the administration of facility-specific discontinuance studies; participants, moreover, confuse the distinction between them. As the Postal Service has explained throughout this docket, the selection of candidates for discontinuance study as part of the Retail Access Optimization (RAO) Initiative is a process separate and distinct from the pre-existing and legally required process used to study facilities for actual discontinuance. The intervening parties' discussion of the RAO Initiative selection process and the discontinuance study process reflects a conflation of the two processes and a failure to recognize their independence and distinct goals. As described throughout this docket in Postal Service testimony, the Request and other pleadings, and reiterated below, the RAO Initiative relies upon four sets of nationwide criteria to nominate a mix of four facility groups that reflect application of the new regulations governing "top-down" Headquarters-initiated discontinuance review initiatives. Quite separately, the ensuing discontinuance studies themselves (at least those which proceed to a field recommendation for discontinuance) simply rely upon an existing discontinuance study process required by statute, a process defined in postal regulations that has evolved over more than 30 years of postal experience, and Commission affirmations and remands, that have served to shape the process.. The individualized review

appropriate for use on a facility-by-facility basis has also been impacted by legislative changes to the organic statute, 39 U.S.C. § 404(d).

Participants who fail to distinguish these two foundational elements of the RAO Initiative, intentionally or otherwise, sow confusion through arguments that combine both elements improperly and thereby criticize an Initiative whose implications they see as negative for themselves.

A. The RAO Initiative Identifies Candidate Facilities By Applying Criteria that Measure General Characteristics.

Several intervenors focus their RAO Initiative criticism on the criteria used to select candidates for later conduct of a discontinuance study, and particularly on the use of the Small Office Variance (SOV) tool to identify Post Offices with low workload. See NAPUS Initial Brief at 12-14; NLP Initial Brief at 31-36. More specifically, these parties criticize the RAO Initiative's reliance on formulas in lieu of a more individualized consideration of particular retail facilities' unique attributes. *Id.* According to these critics, many of the retail facilities selected as candidates for discontinuance study have attributes that require them to be assessed in a different way than the average retail facility. *Id.* These criticisms reflect a failure to understand the RAO Initiative selection criteria's broad, network-wide scope, and their subsequent detailed consideration during each highly individualized discontinuance study.

The NAPUS and NLP briefs repeat their witnesses' allegations that the workload measurement used in the RAO Initiative is inaccurate, and challenge the use of productivities and formulas to calculate non-revenue activity and



scanning activity. NAPUS Initial Brief at 12-13; NLP Initial Brief at 32-34. The use of productivities for measuring workload at non-Point of Sale (non-POS) retail facilities serves the purposes of the general, network-wide review appropriate for the selection of candidates for discontinuance study as part of the RAO Initiative.

The data used in the RAO Initiative, including the data reflected by the USPS Small Office Variance (SOV) tool, are accurate and reliable. See USPS Initial Brief at 7. Neither NAPUS nor NLP rebut this basic reality; they fail to acknowledge that the testimony of Postal Service witness David Ruiz (USPS-SRT-10) explains exactly how and why SOV is so accurate. Instead, their respective briefs build arguments about SOV that demonstrate how little they understand it. Both also try to use the fact that, for some purposes, SOV relies upon standards (activity in non-POS offices is modeled by activity measured directly in POS offices of the same size) to argue that certain RAO Initiative candidate offices may not exactly match the standards. That is true, but trivially so, since neither NAPUS nor NLP can point to any record evidence establishing that one RAO Initiative nominated office actually varies materially from the POS based averages; all of their inquiries are fundamentally hypothetical in nature. As such, their arguments do stand for the proposition that variance about a standard does exist; beyond that, their arguments amount only to speculation.

Attributes of a particular retail facility may vary from the standard based productivities. However, that does not make the mere use of a standard

inappropriate. Instead, examination of the real attributes of a particular office<sup>12</sup> is precisely what gets examined in any facility specific discontinuance study.<sup>13</sup> Within each discontinuance study multiple opportunities to clarify the facility-specific record arise.

While the NAPUS and NLP briefs repeat their examples as if they were established fact, no concrete record evidence establishes anything more than possibilities or mere demonstration that standards based upon an examination across facilities by definition do not mirror the exact circumstances in each facility. Such tautological observations, however, add nothing to the evidentiary record and do not constitute meaningful argument.

As described by Postal Service witness Ruiz, the data contained in SOV undergo reviews on many levels, all of which can lead to correction by Postal Service employees. USPS-SRT-1 at 2-8; Tr. Vol. 5 at 1752-55, 1781-82. And if a retail facility is the subject of a discontinuance study, there are opportunities for customers to document any inaccuracies in the record, by for example, responding to questionnaires.

---

<sup>12</sup> Examples the postmaster organizations assert the existence of include an above-average number of non-financial transactions or scans, where on average there are lower revenue transactions, or where transactions take more time than in other retail facilities. In the development of SOV standards, these would be balanced mathematically by offices with below-average non-financial transactions or scanning activity, offices whose revenue transactions had a higher values, and offices where transactions take less time.

<sup>13</sup> These and other issues raised in the NLP Brief at 35-36 – including community offers of free space for Post Offices; customer nonpostal shopping habits; alternative postal retail service providers; and economic development of affected communities – are considered during a discontinuance study.

B. The Discontinuance Review Process Established Under Section 404(d) And Refined by PRC Review Assesses Specific Aspects Of Each Retail Facility.

APWU challenges the Post Office discontinuance process embodied in USPS Handbook PO-101. Like the criticisms of the RAO Initiative levied in the NAPUS and NLP briefs, APWU's contentions reflect an inaccurate understanding of how it works; this fatally undermines substantially all of APWU's comments.

APWU describes a number of factors as important to the Post Office discontinuance study process, and alleges that the Postal Service does not consider them. APWU Initial Brief at 16-29. For the most part, APWU is simply wrong in how things transpire in respective discontinuance studies, despite it apparently having reviewed a couple of them. The Postal Service submits that how things are addressed in specific studies is not an appropriate focus for this docket; if problems exist in a specific docket, the factual and legal remedies exist within those dockets, and on appeal of final agency decisions. So the Postal Service has chosen not to respond here to criticisms of the claimed conduct in particular facility-specific studies. When and if warranted, those issues are addressed in respective discontinuance studies and any associated appeal docket.

APWU, it should be noted, is not only late to the game, it has missed the bus, or busses, that might have taken it there. The discontinuance review process began its evolution shortly after the 1976 amendments to section 404 established the need. For approximately 20 years, the Postal Service standards for discontinuance studies, reflected in 39 C.F.R. § 241.3 and USPS Handbook

PO-101, evolved steadily through various management ideas for the conduct of discontinuance studies and Commission responses in the form of its decisions on appeal of respective final agency decisions. In fiscal year 2011, the latest evolution in those standards took place in the aftermath of the Commission's Docket No. N2009-1 SBOC advisory opinion by means of a conventional *Federal Register* rulemaking initiated by the Postal Service . APWU chose not to participate in that rulemaking or otherwise make its views known to the responsible decision makers within Postal Service management. Now, apparently resting on its own witness Morrison's testimony (whose testimony harmonizes with the Postal Service approach, USPS Initial Brief at 65-68), APWU launches a curious attack on the now well-established and largely accepted process. APWU's approach manifests a fundamental misunderstanding of how the process can and does change. It fails to follow how discontinuance studies, and appeals thereof, have evolved over time. And it assumes as factual materials the veracity of which the parties in this docket have had no opportunity to examine or validate through the crucible of cross-examination or rebuttal. Consequently, APWU's arguments critical of the discontinuance process are neither material nor constructive in the context of the instant RAO Initiative review proceeding.

Examples of particular fact patterns that APWU claims are problematic, how they are raised in discontinuance studies and how the Postal Service chose to respond to them, are discussed below to illustrate how far from the ballpark APWU ranges. The discontinuance study process complies with 39 U.S.C. §

404(d), provides opportunities for public input, and considers the effects on the community that result from a retail facility discontinuance. *See, e.g., United States Postal Service Notice of Filing*, PRC Docket No. A2011-25 (August 5, 2011), Administrative Record (reflecting customer input and consideration of effect on the community). As part of this process, the Postal Service informs the community about how a potential discontinuance would change its access to postal services. *See, e.g., id.* at Item No. 33 (explaining how potential discontinuance would change customer options for accessing postal services).

The Postal Service also encourages customers to provide information regarding unique aspects of the community, and considers these local characteristics, including vehicular travel restrictions, customer demographic information, and growth in the community. *See, e.g., id.* at Item No. 25 (reflecting consideration of customer travel restrictions and elderly population) and p. 25 (reflecting consideration of growth in the community). During the discontinuance study process, the Postal Service discloses its economic savings calculation, which often includes labor savings,<sup>14</sup> lease savings,<sup>15</sup> and the cost of replacement

---

<sup>14</sup> APWU contends that the Postal Service does not achieve savings when an employee of a discontinued facility is transferred to another facility and remains employed by the Postal Service. APWU Initial Brief at 27. As explained by the Postal Service in various Post Office discontinuance appeals, savings results from the elimination of a career employment position that would otherwise need to be filled. *See, e.g., Comments of United States Postal Service*, PRC Docket No. A2011-25 (September 14, 2011), at 6-7.

<sup>15</sup> APWU alleges that “the Postal Service simply ignores [a community’s offer to provide a facility for the Post Office free of charge].” APWU Initial Brief at 24. The Postal Service considers this type of offer when raised during (and often before) the discontinuance study process, but generally labor costs are far greater than lease costs. *See, e.g., United States Postal Service Comments Regarding Appeal*, PRC Docket No. A2011-73 (November 8, 2011) (reflecting labor costs more than three times larger than lease costs).

service.<sup>16</sup> Because of their dependence on facility-specific circumstances, these concerns raised in the APWU Initial Brief are more appropriate for consideration in the context of a particular discontinuance study, and not as part of this docket, which deals with a more general, network-wide nomination of candidates for the conduct of respective studies—with the latter still measured by the standards of section 404(d), implementing regulations in the Code of Federal Regulations, USPS Handbook PO-101, and the potential for Commission review of final agency decisions on appeal.

Although each discontinuance study is unique to the particular retail facility and community, many of the comments submitted by customers implicate national policies of the Postal Service, whether directly or indirectly. Since USPS Handbook PO-101 also emphasizes applicable policies and the statutory provisions driving them, responding to customer comments by referencing these policies is both appropriate and necessary. This approach is eminently consistent with the Postal Service approach to respective customer concerns. After one has been involved in many studies, customer expressions of concerns can readily be lumped into groups. Sometimes in a study, the response to a customer concern is particularized and specific to the customer's articulation; at other times, the response remains more generic. While one can criticize this approach as being insufficiently particularized to each customer's plausibly

---

<sup>16</sup> APWU represents that the Postal Service's economic savings calculation omits the cost of expanding rural or Highway Contract Route (now Contract) delivery service. APWU Initial Brief at 27. APWU's representation is inaccurate, as delivery costs are included in the "cost of replacement service" entry in the economic savings breakdown. See, e.g., United States Postal Service Notice of Filing, PRC Docket No. A2011-25 (August 5, 2011), Administrative Record at Item No. 29, p. 2.

unique concerns, it is also a reasonable approach to the range of concerns that customers tend to express. Much as the RAO Initiative itself consists of a management effort that pursues efficiency in operations, the tendency to use standard language in response to customer concerns also amounts to a reasonable approach that tries not to maximize the resources a given discontinuance study requires.

The Postal Service has found that it is more effective and efficient to cite to national policies. Once aware of the policy governing a particular comment, customers then have the ability to work with local postal officials to resolve any customer-specific issues (such as the location of a roadside mailbox). And because the comment stage of the discontinuance study process occurs before any final determination regarding discontinuance, the development of more customized responses could lead to inefficient use of resources, speculation, and customer confusion. Accordingly, many if not most of the comments characterized as “non-responsive” at pages 17-23 of the APWU Initial Brief are in fact responsive and consistent with the approach described above.<sup>17</sup>

APWU proposes changes to the USPS Handbook PO-101. APWU Initial Brief at 27-33. The timing of these proposals is inappropriate and unfortunate, and consideration of revisions to the Handbook PO-101 is outside the scope of this docket. APWU had many opportunities to offer its proposals at appropriate

---

<sup>17</sup> For example, APWU categorizes as non-responsive a Postal Service comment discussing the dependability of carrier service in response to a concern about leaving checks or cash in the mailbox. APWU Initial Brief at 17. Both the customer comment and the Postal Service response concern the dependability and security of carrier services, such that a customer can often predict when, on a given day, a carrier actually effectuates delivery.

times, but APWU declined those opportunities. Most recently on March 31, 2011, the Postal Service issued a proposed rule, published in the *Federal Register*, regarding changes to the USPS Handbook PO-101. See 76 *Fed. Reg.* 17794. Although the Postal Service received 257 submissions commenting on the proposed rule, it received no input from the APWU. 76 *Fed. Reg.* 41413. Through rebuttal testimony, APWU had another opportunity to address the USPS Handbook PO-101, but again it declined to do so. Having expressed no interest in the Handbook PO-101 at the appropriate times for comment, it is improper for APWU to offer its proposed changes for the first time on brief, at least if it truly expects the Postal Service or the Commission to focus upon them.

VI. The Remaining Intervenor Criticisms Of The RAO Initiative Lack Merit.

A. There Is No Basis For The Public Representative's Conspiratorial Kerfuffle.

1. Conspiracy theories make inherently more interesting reading than discovery responses in administrative records.

At page 5 of its Initial Brief, the Public Representative declares that the administration of the RAO Initiative reflects "egregious example[s] of apparent political[ly] motivated action," is rife with "specious proposed closing[s]" and "smacks . . . of something wholly unsavory and inappropriate." Why such allegations?



First, these accusations arise apparently because of the revelation by Postal Service witness Boldt at page 315 of Tr. Vol. 1. There, he explained that, since the RAO Initiative discontinuance studies were under way out in the field, rather than check (again) to ensure that the 3650 facility candidate list compiled by Headquarters was accurate, Headquarters would rely on eagle-eyed field discontinuance coordinators to identify any facilities erroneously on the list. The Commission is invited to observe that the initial version of USPS Library Reference N2011-1/11 filed on September 21, 2011 refutes the argument at pages 4-5 and 11 of the Public Representative's Initial Brief that removal from the RAOI candidate list is "extremely difficult" and risks facilities not fitting the RAOI criteria being closed based on RAOI candidate attributes they do not possess. As reflected in that Library Reference, five retail annexes erroneously on the July 27 RAO Candidate List (USPS Library Reference N2011-1/2) were de-listed at the end of August when errors were spotted early in the discontinuance review process.<sup>18</sup>

Next, at page 5 of its Initial Brief, the Public Representative alleges the absence of any explanation for why 26 RAO Initiative candidate facilities in Alaska were removed from consideration. Into what it perceives to be a void, the Public Representative injects a claim of political influence. PR Initial Brief at 5,

---

<sup>18</sup> At pages 4-5 of its Initial Brief, the Public Representative asks "who at the 'top' or Headquarters determines by use of an undisclosed method/individual, what facilities will be removed from the list, and ultimately which ones will close?" Had an interrogatory been propounded, the response would have been: the Manager of the Change Suspension Discontinuance Center in Denver, Colorado, who receives information directly from scores of field discontinuance coordinators; and the Vice President, Delivery and Post Office Operations in Washington DC, respectively. But, presumably, since facts would have undermined the development of the Public Representative's conspiracy theory, such an interrogatory was never posed.

n.8. However, the perception of a void can only be maintained if one averts ones eyes from the Postal Service's October 25, 2011 response to interrogatory DBP/USPS-82. There, the Postal Service provides the plain, rational reason why candidate facilities in Alaska were most likely and easily eliminated from further consideration early in the review process.

Finally, at page 5, the Public Representative attaches sinister motives to the fact that 17 RAO Initiative candidate retail facilities are located in a single Chicago Congressional district.<sup>19</sup> Since the publication of the RAO Initiative candidate list on July 27, the Public Representative has had every opportunity in this docket through discovery to explore how the RAO Initiative nominating criteria were developed and why it would appear, if one ignored those criteria, that a seemingly disproportionate number of facilities from a particular state or metropolis were on the list of nominees. That discovery might have shed light on how different factors influenced why Post Offices existed in some locations, with stations, annexes and branches in others. Such information then might have helped the Public Representative to understand that an historical proliferation of Post Offices or stations or annexes and alternate access channels in one service area, compared to a very different mix of retail facilities and alternate channels in a similarly situated service area, could set the stage for a higher percentage of RAO Initiative nominees being concentrated in the former service area,

---

<sup>19</sup> The Public Representative erroneously characterizes the July 27, 2011 nomination of these facilities for discontinuance review as "proposed closings." The Postal Service would prefer to assume that the mischaracterization was inadvertent.

compared to the latter. But, no such discovery was undertaken apparently because, once again, the political conspiracy theory seemed more expedient.

2. History can inform us regarding what is or is not realistic.

At pages 15-16 of its Initial Brief, the Public Representative raises the ominous specter of local discontinuance review teams being intimidated by the fact that 3650 retail facilities were nominated for discontinuance review under the RAO Initiative, feared reprisal from Headquarters if they dare propose that a study be halted or that a facility not be discontinued. The Public Representative thus argues at page 15 that it is unrealistic to expect local management to "challenge" RAO Initiative.

Apparently, the Public Representative has ignored the recurring updates of USPS Library Reference N2011-1/11. Each status report shows ever-increasing numbers (80 ... 125 ... 195) of RAO Initiative candidate facilities being removed from consideration as a result of recommendations by local discontinuance review teams. These are not "challenges" to senior management. They simply reflect that, irrespective of the nominating criteria, local managers follow the USPS Handbook PO-101 process, apply their judgment and report the results up the chain-of-command. The resulting removal of candidates from further consideration is simple proof that the process works as intended.

The Public Representative fails to acknowledge the very recent "top-down" Station and Branch Optimization and Consolidation Initiative (SBOC)

reviewed by the Commission in Docket No. N2009-1, in which Headquarters nomination of more than 3000 candidate facilities for the field to analyze and consider whether to submit discontinuance proposals using USPS Handbook PO-101, resulted in only 140 stations and branches being discontinued. Tr. Vol. 1 at 139. Notwithstanding the participation of various postal employee organizations with vested interests in the outcome of the RAO Initiative<sup>20</sup> and their ability and interest in revealing evidence of intimidation and reprisal that would rain down on local discontinuance review teams, the Docket No. N2011-1 record reveals no such reaction by postal management at any level, no reaction to the elimination of candidates from consideration in the current Initiative, hence, no basis for the insinuations in the Public Representative's Initial Brief.<sup>21</sup>

B. Conflation Of RAO Initiative Elements Leads to Confusion.

1. The umpteenth summary could be the charm.

The pace of litigation in this docket has presented logistical challenges and burdens to all involved. Perhaps, it can be blamed for the inability of some to grasp fundamental aspects of the Retail Access Optimization Initiative. At its core, it involves two steps, one very simple and one very complex.

The first step is the creation of a pool of retail facilities to examine for possible discontinuance. The Postal Service's discretion here is very broad. The Postal Service could have declared that it was going to study every retail facility, or each one of a particular size, or on a particular side of the street, or with a six-

---

<sup>20</sup> These organizations had parallel interests in the SBOC Initiative.

<sup>21</sup> See, pages 34-35 of the USPS Initial Brief.

digit finance number ending in zero. Alternatively, it could develop a candidate pool applying a variety of objective factors, such as facility-specific workload and walk-in retail revenue data and related criteria, which as discussed at pages 14-17 of USPS-T-1, is precisely what happened here.

In the second, infinitely more complex step, the Postal Service must apply the USPS Handbook PO-101 discontinuance review process to the candidate pool. The Handbook identifies very specific criteria to be applied in determining the fate of a candidate facility, irrespective of the selection criteria that first brought it within the scope of the Initiative. These specific criteria must conform to statutory policy, as implemented in the USPS Handbook PO-101, and include, *inter alia*, consideration of the driving distance between the facility being studied and any nearby facilities or access points that might reasonably be expected to absorb retail traffic, together with alternate access channels for obtaining postal products and services.

## 2. AUSPL gets it wrong.

At pages 6-9 of its Initial Brief, AUSPL conflates the RAO Initiative nomination process and a discontinuance study conducted pursuant to USPS Handbook PO-101 essentially to argue that the selection criteria fail to properly consider whether discontinuance of any facility can be justified. On that point, the Postal Service agrees. Whether nearby offices are sufficiently accessible and supplemental alternate access channels exist in sufficient proximity and density to justify closure of an RAO Initiative candidate Post Office are matters examined during the much more rigorous USPS Handbook PO-101

discontinuance review process. That process is applied on a case-by-case basis, irrespective of systemwide generalities that one could offer about the abundance or lack of such alternatives. AUSPL is correct to anticipate at page 6 of its Initial Brief that local discontinuance coordinators and the USPS Vice President for Delivery and Post Office Operations will exercise "[c]ommon sense." Accordingly, it is contrary to common sense to prejudge the individual outcomes and declare that the cumulative effect of the RAO Initiative "would have a devastating effect on rural America," especially given the absence of any record evidence in this docket to support such a conclusion.

3. NAPUS and NLP follow suit.

At page 9 of its Initial Brief, NAPUS criticizes the RAO Initiative on two grounds. The first is that the candidate selection criteria did not include analysis of the degree to which patrons of a postal retail facility targeted for a discontinuance study actually utilize available alternate access channels.<sup>22</sup> The second critique is that selection criteria do not use driving distance as a means of measuring facility proximity. Neither criticism is material. The candidate selection process merely nominates facilities for discontinuance review. It is not intended to and cannot determine the fate of a facility in the discontinuance review process. Establishing whether local customers have reasonably available

---

<sup>22</sup> NAPUS' Initial Brief and the testimony of its witnesses are silent about how it could be reasonably determined whether the purchaser of stamps at a particular grocery store or the mailer of parcels at a particular Approved Shipper location within x and y miles, respectively, of an RAOI candidate Post Office, regularly patronized only that Post Office. Nor does NAPUS describe a survey instrument whose design would discourage all patrons worried about the discontinuance of a Post Office or the employment status of a Postmaster/neighbor/friend from overstating their dependence on that Post Office to the exclusion of any reasonably available alternate access channels and nearby offices.

alternate access channels is a critical element of every discontinuance review process. By way of contrast, it is not a necessary element of any nomination process. Whether a community has reasonable access to a nearby Post Office, how they would be expected to get there and how long it might take are all factors considered later in the discontinuance review process.

At pages 34-35 of its Initial Brief, NLP produces a list of items that did not serve as criteria for nominating a retail facility for discontinuance review under the ROA Initiative. However, contrary to the preferences of NAPUS and NLP, it is not necessary to conduct the discontinuance process, in whole or in part, in order to create a pool of candidate facilities to which the discontinuance process would then redundantly be applied.

#### 4. NNA goes one step farther.

In a similar vein, at page 3 of its Initial Brief, the National Newspaper Association (NNA) argues that the RAO Initiative is flawed because the Postal Service did not elevate the interests of Within County newspapers to the level of a criterion that significantly shaped the Initiative's low earned workload Category 1 candidate pool described at pages 14-15 of USPS-T-1. The Postal Service has broad discretion in selecting the retail facilities it wishes to examine at any given time for discontinuance. After all, the Initiative reflects the first exercise of discretion by Headquarters under its new guidelines to nominate offices for discontinuance studies, so an approach that identifies a number of offices using four sets of criteria should not constitute a meaningful surprise.

The Postal Service has made clear why and how the analysis of retail workload can be skewed by reference to commercial revenue that may be assigned to an office but that has virtually no impact on retail workload consisting of mail acceptance, distribution and delivery of that office. Tr. Vol 1 at 162-63.<sup>23</sup> The USPS Handbook PO-101 review process routinely examines both the retail and commercial activity of an office. NNA even acknowledges at page 3 that the preferences of Periodicals mailers and other commercial mailers are taken into account in the discontinuance review process. See *a/so*, USPS Initial Brief at 50. Accordingly, the Commission need not embrace NNA's myopic perspective at page 4 of its Initial Brief that the RAO Initiative nomination process is flawed by the absence of a heavy presumption in favor of continued operation of an office simply because a Within County newspaper of undetermined volume and frequency enters at least half of its volume over some unspecified time period at some office, irrespective of the weight other considerations present. This NNA argument again conflates nomination of offices for discontinuance studies with the subsequent independent conduct of those studies.

C. NAPUS Misreads The Testimony Of Witness Boldt And USPS Handbook PO-101.

At page 11 of its Initial Brief, NAPUS mischaracterizes the testimony of Postal Service witness Boldt (Tr. Vol. 1 at 321) as reflecting a concession that "there are no issues that could be brought up at a community meeting that would lead to re-evaluation of a proposed closing." In reviewing the record, the

---

<sup>23</sup> Revenue from entry of commercial mail certainly counts in a discontinuance context, so it hardly presents a novel issue.



Commission is likely to be as puzzled as the Postal Service. At page 321, witness Boldt was asked whether there was a specific or identifiable rationale that could be presented at a community meeting that would derail the discontinuance of a particular Post Office. He responded that none exists -- in other words, no magic words that, if simply uttered at each community meeting -- would bring a discontinuance study to a halt. He emphasized that each proposal was "looked at on a case-by-case basis." If NAPUS were fair, it would have acknowledged witness Boldt's testimony about the importance of community meetings to the discontinuance review process and the fact that information which surfaces at such meetings can lead to a determination not to proceed with a plan to discontinue a retail facility. See Tr. Vol. 5 at 1811.

At pages 10-11 of its Initial Brief, NAPUS persists in mischaracterizing USPS Handbook PO-101 § 251.1 as *requiring* that all discontinuance community meetings be scheduled on evenings and weekends. In this instance, NAPUS finally acknowledges the surrebuttal testimony of witness Boldt, but only for purposes of a vain effort to claim that such meetings are scheduled in a manner to exclude participation by certain customers in violation of section 403(c).<sup>24</sup> The claim is flawed factually and legally.

First, at page 4 of USPS-SRT-2, witness Boldt simply identifies challenges that can emerge in trying to schedule a community meeting for a time that would encourage public participation. His testimony points out that local managers responsible for such scheduling can struggle when trying to take into account the

---

<sup>24</sup> Since no meeting time can be convenient for all customers, any schedule serves to exclude some customers.

perceived time preferences of respective customer groups, those who routinely or daily use a Post Office and those who use it occasionally during what are for them workdays.

Second, the fact is that all days of the week and times of day have one thing in common. The selection of any day of the week or any time of day unavoidably proves unworkable for some customers. The attempt by NAPUS to characterize the consequences of this reality as a violation of section 403(c) illustrates a fundamental misunderstanding of the law. Section 403(c) does not bar the Postal Service from discriminating among postal customers or granting reasonable preferences. It only bars discrimination and preferences that are unreasonable or undue. More importantly, it explicitly applies only to the provision of postal services and to the establishment of classifications, rates and fees. The scheduling of a discontinuance community meeting is none of these. Accordingly, reference to section 403(c) in this context is sensational but nonsensical.

In conclusion, the Postal Service invites all participants critical of its approach to scheduling of discontinuance-related community meetings to review the scheduling of public meetings by others charged with considering the interests of postal retail customers. Parties could start by examining the times of day and days of the week selected for the two Docket No. N2009-1 field hearings and the seven Docket No. N2010-1 field hearings conducted by the Postal Regulatory Commission. Or parties might critique the times and days of the

week during which the Commission scheduled its public hearings for review of the RAO Initiative.<sup>25</sup>

D. When Citing Record Evidence, The NLP Initial Brief Sometimes Vacillates Between Disingenuous And Misleading.

Legal briefs can illuminate a path through a complex administrative record and invite the Postal Regulatory Commission to reach conclusions that are founded on substantial evidence. Or they can materially distort and misstate the record with such frequency as to lose value as an insightful guide for the Commission. As explained below, the Initial Brief filed by the National League of Postmasters (NLP) repeatedly fails to serve the former purpose. If the Commission carefully compares the record evidence with various characterizations of it reported in the NLP Brief, the Commission will find at least as many material variances between the former and the latter as are cataloged below.

For instance, at page 37 of its Initial Brief, NLP cites Tr. Vol. 1 at 350-52 as the basis for an assertion that "witness Boldt admits" that "input from postmasters and supervisors was sought only after the ROAI was fully developed." However, when the Commission reviews the transcript cited by NLP, it will find no such admission there. Or anywhere. At page 351 of Tr. Vol. 1, witness Boldt plainly states, "I am not familiar with the consultation process." As reflected at page 350, the characterization of that process attributed to

---

<sup>25</sup> Parties wishing to argue that such dates and times either encourage or discourage public participation are reminded to file motion for leave to supplement their reply briefs before doing so.

witness Boldt is actually in the form of a question posed by NLP, not in any answer by the witness.

Similarly, at page 40 of its Initial Brief, NLP asserts that "witness Boldt was candid in admitting that 'optimization' is 'really just downsizing with a more attractive label,' and that 'optimizing' really meant discontinuance or downsizing." The NLP Brief cites Tr. Vol. 1 at pages 441-42. The NLP Brief apparently reflects a calculation that Postal Regulatory Commissioners, together with staff, do not read the administrative record. At page 442, it is quite clear that it was NLP counsel who characterized optimization as "really just downsizing with a more attractive label" and that he got no agreement from the witness, candid or otherwise, during cross-examination.

Likewise, the Commission will find there to be a material variance between the testimony of NLP's own witness and the account of his testimony in the NLP Initial Brief. At page 20 of its brief, NLP cites page 9 of the testimony of NLP witness Donald Hobbs (NLPM-RT-2) and pages 1265 and 1280 of Tr. Vol. 3 as offering evidence of "a business that regularly needs to turn around mail that is received by 11:00 a.m. and needs to go back out by 5:00 p.m. the same day." However, page 9 of NLPM-RT-2 references no business fitting that description. Nor do pages 1265 or 1280.

E. The Anecdotes Of NLP Witness Hobbs Are No Substitute For Substantial Record Evidence.

For virtually all of its characterizations of rural or small town life, NLP relies on the observations of no sociological or market researcher, but the mayor of a

small community in Iowa disturbed about the proposed discontinuance of the Post Office in his own community. Motivated by the fact that his own Post Office is being reviewed for discontinuance, Mr. Hobbs' testimony is purely anecdotal, based upon his limited personal observations and contacts, to which he appends a newspaper article or two. When pressed to provide even the most basic empirical support for the local economic impact issues he raises, he has none to offer. Tr. Vol. 3 at 1266-69, 1285. His testimony expresses an understandably strong preference for a "brick and mortar" Post Office but reveals no experience conducting retail transactions with rural letter carriers. His testimony thus provides no substantial evidence to support the conclusion that rural carriers operating as a "Post Office on Wheels"<sup>26</sup> cannot provide adequate retail service to customers, especially when 85 percent of RAO Initiative Category 1 Post Office retail transactions involve the mere purchase of postage. USPS-T-1 at 7-8; USPS Library Reference N2011-1/NP11. At page 21 of its Initial Brief, NLP alludes to "possibly" lengthy wait times and improbable scenarios involving customers on a rural carrier's route bombarding the carrier with what are quite rare or infrequent overseas mailings, Certified Mail, Express Mail, or money order transactions. Primary reliance on worst-case scenarios can justify virtually any conclusion, but they provide a poor basis for assessing whether normal operations are suited to handle normal circumstances. It is no knock on Mr. Hobbs to observe that his testimony reveals him to be much more concerned than he is informed.

---

<sup>26</sup> Who serve millions of rural and small town postal customers everyday.

F. NNA's Suggestions For Improving Discontinuance Review Are Ill-Conceived.

At page 5 of its Initial Brief, NNA pats itself on the back by assuming that "input from community newspapers about past handling of citizens' and journalists' desires to take photographs and make recording may have aided the Postal Service in creating a more open process." Even if that were the case, NNA is misguided in suggesting that the best way to reach the customers in an isolated ZIP Code about the goings on at a particular Post Office, station or branch is via local newspapers, or radio and television news. The Postal Service has no control over what independent editors consider to be newsworthy. With the general declines in newspapers and circulations, fractured television viewing and radio listening audiences, and the declining role of local news programming in favor of other broadcast content, it is puzzling why NNA believes that these media, which target broad geographical areas, will reach as many households or businesses in the service area affected by a proposed discontinuance as correspondence and a questionnaire from the Postal Service mailed to every residential and business address within the affected Post Office/ ZIP Code.<sup>27</sup> The Postal Service employs a variety of means to inform directly those customers potentially served by a Post Office being studied for discontinuance and how they can express their concerns in writing and in person. The opportunity to participate in the process is reasonably afforded several times to those who could be affected via multiple channels that give them considerable flexibility well

---

<sup>27</sup> Perhaps NNA would have a different view if the direct mail piece was a total market coverage piece furnished by one of its members.

in advance of a final determination. See USPS Handbook PO-101 at §§ 24-26, 35 and 36. To quote NNA at page 6: "These are simple tools," or to paraphrase NNA: methods employed by the Postal Service. They may not be welcomed by a press trade association, but they are effective for reaching local citizens. The Postal Service considers current methods of notifying customers and inviting their participation in the discontinuance process preferable to antagonizing cable and telephone service providers by adding clutter to the utility poles they maintain, and to risking all manner of discrimination and preference complaints by failing to publish notices in every church bulletin, or relying too heavily on non-secular channels of communication. In answer to NNA's argument at page 6, these are very good reasons why such steps are not promoted.<sup>28</sup>

At page 7 of its Initial Brief, NNA ignores the various channels and multiple rounds in which customers of a Post Office, in their own words, can record their individual concerns about the potential discontinuance of a Post Office. At page 6 of its Initial Brief, NNA cavalierly elevates the suggestion of NLP counsel to an argument that the Postal Service should schedule multiple community meetings for each discontinuance proposal "so that a maximum number of citizens could be reached." This is followed by the equally cavalier NNA proclamation at page 7 of its Initial Brief that all such meetings be recorded and transcribed by the Postal Service because in NNA's view, "even a small Post Office budget could

---

<sup>28</sup> As can be observed occasionally in the Commission A-series dockets, the Postal Service has made use of the press to reach out to customers during discontinuance studies when a particularly large office, or the consolidation of two offices into a single one, is under consideration. It remains to be seen whether the new requirement for a direct mailpiece to all addresses in a 5-digit ZIP Code obviates such outreach through the press.

accommodate such an option."<sup>29</sup> No record evidence supports any such conclusion, and the dollar amounts belie any such conclusion. Moreover, for an organization that appears to recognize that "budget constraints" can limit the organization's programmatic activities (see NNA Initial Brief at 1, 7), it is surprising that NNA would impose on the RAO Initiative 3650 times however many community meetings it may take to maximize the opportunity for every customer to attend at least one, and the creation of a transcript for each such meeting. It is sufficient that USPS Handbook PO-101 §§ 25 and 26 require that meeting summaries be prepared for inclusion in the administrative record and that written follow-up responses to questions asked at the meeting be provided if answers cannot be produced at the meeting.

The Commission routinely reviews administrative records in the course of its A-series Post Office discontinuance review dockets. Those records have evolved over time to serve both the internal Postal Service final determination process and the Commission appeal process. Further evolutionary developments in discontinuance review record keeping should continue serving the needs of those processes rather than an abstract and surrealistic goal of complete, enforced collection and recordation of all possible information.

---

<sup>29</sup> NNA here converges with a suggestion by APWU witness Morrison that the Postal Service's goal should be to ensure a "100 percent sample" of customers. Tr. Vol. 3 at 972. This argument has several flaws, starting with the assumption that all members of every household, and all households themselves, are so interested in discontinuance matters that their involvement *must* be guaranteed. While the Postal Service would agree that getting all input from those customers interested in providing it may be a reasonable goal, no policy goal nor the quality of a discontinuance study would be served by attempts to force input from unwilling customers. The methods employed (questionnaires, community meetings, steadfast acceptance of correspondence from customers at any time in the process, plus posting a formal proposal together with a formal invitation for comments and a sample comment form) do a fine job of eliciting input from those customers who care to provide it.



NNA's Brief at page 7 goes against the tide and argues that local and District postal managers are too self-interested in the outcome of a Post Office discontinuance proposal to be objective. Others in this docket, predictably APWU, NAPUS and NLP expend considerable effort arguing that Headquarters and Area managers are too far removed to play an appropriate role in decision-making. NNA is mistaken in its presumption that community meetings are inherently the dominant channel through which community input is received. NNA's claims of potential postal management bias, plus intimidation or incitement of fear at such meetings, are as unfounded as they are outrageous. The record in this docket shows reprehensible conduct to be directed toward postal representatives, not the other way around. See USPS-SRT-2 at 9.

G. CSRL's Inattention Is The Source Of The Belief That It Made A Revelation.

As with other intervenors, the Initial Brief filed by the Center for the Study of Responsive Law (CSRL) reflects confusion of the RAO Initiative facility candidate nomination process with the USPS Handbook PO-101 discontinuance process, while ignoring completely the role played by the Commission's section 404(d) review process. Accordingly, CSRL spends most of its brief, despite the lack of substantial supporting record evidence, offering a gloomy projection of the cumulative outcome of the individual RAO Initiative discontinuance determinations that have yet to be made. In the interest of brevity, having refuted the same arguments in response to other intervenors' briefs above, the Postal Service will not repeat them here. Instead, the Postal Service responds below to the one unique argument offered by CSRL.

At page 5 of its Initial Brief, CSRL references pages 54-58 of the Additional Materials provided by the NLP on October 21 as "evidence ... that in fact the actions taken by the USPS are intended to produce cost savings." CSRL is invited to review USPS-T-1 at 13 and the numerous citations on page 11 of the Initial Brief of the Postal Service to postal testimony and interrogatory responses from the earliest days of this docket reflecting the expectation of the Postal Service that the RAO Initiative is expected to generate cost savings, but that there is no target number of facilities closures or cost savings.

CSRL is also confused about the potential cost savings that could be associated with the RAO Initiative, arguing at page 5 that the Postal Service originally claimed that it would save \$1 billion if all RAO Initiative candidate facilities were closed. This figure appears in the materials provided by NLP and referenced at footnote 2 of the CSRL brief. However, scrutiny of those documents reveals that they make an undefined reference to "Small Post Offices" at page 58. There is no reference to the RAO Initiative or its limited universe of 3650 facilities that includes a diverse pool of facilities, many of which fit no one's definition of "Small Post Offices." Second, given that the \$1 billion figure is obviously related to something other and broader than the RAO Initiative, there is no basis for the CSRL's argument at page 5 that "[t]he cost savings projected, by the USPS, from closure of *all* RAOI candidate facilities was eventually lowered by the USPS to \$200 million." Adjustments in CSRL's own misunderstanding do not make them record evidence.

H. VPO Concerns Are Misguided And Overstated.

NNA asks the Commission to consider issuing an Information Request to further explore the role of Village Post Office in light of NNA's *belief* about what it claims the Postmaster General said in a recent news interview about the role of this recently established alternate access channel. NNA characterizes the interview as implying that "VPOs are taking a much reduced role in the Postal Service's long-term plans to provide service in smaller communities."<sup>30</sup> However, granting NNA's request is unnecessary in light of the evidence that has long been a part of the record in this docket:

VPOs will be established as an alternate access channel for some retail and delivery services where opportunities are deemed to exist, irrespective of the whether a nearby Post Office may be nominated for a feasibility study, a study is under way, an office is being discontinued, or an office has been discontinued. A VPO is not intended to or able to "replace" a Post Office. Hence the roll out of VPOs will continue largely regardless of any discontinuance activity.

Tr. Vol. 1 at 199. Clear ... As ... Day. Accordingly, insinuations to the contrary at page 10 of the APWU Initial Brief, page 19 of the Public Representative Initial Brief, and page 7 of the NLP Initial Brief are based upon disconnective misperceptions and should accordingly be ignored.

---

<sup>30</sup> The news report cited at page 8 of the NLP Initial Brief erroneously refers to the VPO concept as "a plan to replace money-losing offices with retailers contracted to offer basic services," but at least does not add insult to injury by attributing such a blatantly inaccurate characterization to the Postal Service.

For the foregoing reasons, the Postal Service submits that the Postal Regulatory Commission should opine that it has received substantial evidentiary record explanation of the factual and policy bases for the planned service changes and why those changes reflect a reasonable balancing of the various service and efficiency objectives of title 39, United States Code. The Commission should find that the parties opposed to the service changes have raised concerns worthy of serious consideration, but have offered insufficient evidentiary, policy and legal arguments to justify a different conclusion.

Accordingly, the Postal Service respectfully requests that the Commission issue an opinion that is based on a properly-defined evidentiary record and that advises that the service changes under review are ones that the policies of title 39 permit the Postal Service to implement.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Kevin Calamoneri  
Managing Counsel,  
Corporate and Postal Business Law

Anthony F. Alverno  
Chief Counsel, Global Business and  
Service Development

Matthew J. Connolly  
Kenneth N. Hollies  
James M. Mecone  
Brandy A. Osimokun  
Michael T. Tidwell  
Attorneys

475 L'Enfant Plaza West, S.W.  
Washington, D.C. 20260-1137  
(202) 268-2997; Fax -5402  
November 10, 2011